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Written statement* submitted by the Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Children of Incarcerated Parents: Towards Better Investment in the Rights of the Child

Friends World Committee for Consultation (Quakers) would like to draw the Human Rights Council's attention to the particular situation of children of incarcerated parents in the context of the full day discussion "Towards better investment in the rights of the child". Investment in support for children to avoid separation through parental incarceration and to support children to maintain relationships with an incarcerated parent (where this is in the child's best interests) is an investment in children's mental and physical health and wellbeing and can contribute to educational attainment.[1]

Avoiding Separation

The Committee on the Rights of the Child has, with increasing frequency, been making recommendations in its Concluding Observations that States parties to the Convention on the Rights of the Child should take the best interests of the child into account when sentencing their parent or guardian. In its most recent set of Concluding Observations the Committee stated:

"The Committee recommends that the best interests of the child are taken into account as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents which lead to the separation from their children."[2]

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) covered the protection of children of incarcerated parents in their first General Comment.[3] Article 30 of the African Charter on the Rights and Welfare of the Child binds States parties to "provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law".[4] The General Comment states that this should be understood to include any primary carer and that implementation of this provision:

> "requires States parties to review their sentencing procedure and reform it accordingly so that:
> (a) A sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so.
> (b) The court should also ascertain the effect on the children concerned of a custodial sentence if such a sentence is being considered.
> (c) If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.
> (d) If the appropriate sentence is clearly non-custodial, the court must determine the appropriate sentence, bearing in mind the best interests of the child.

[1] For more information on the impact of parental incarceration on children's wellbeing and human rights see: O. Robertson, *Collateral Convicts: Children of incarcerated parents. Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011* (Quaker United Nations Office, 2012); Jennifer Rosenberg (Quaker United Nations Office, 2009) *Children Need Dads Too: Children with Fathers in Prison*; Oliver Robertson (Quaker United Nations Office, 2008) Children Imprisoned by Circumstance; Oliver Robertson (Quaker United Nations Office, 2007) The Impact of Parental Imprisonment on Children; Marlene Alejos (Quaker United Nations Office, 2005) Babies and Small Children Residing in Prisons

[2] Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para. 48

[3] African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013)

[4] African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990)

(e) Finally, if there is a range of appropriate sentence, then the court must use the principle of the best interests of the child as an important guide in deciding which sentence to impose."[5]

The ACERWC notes that this provision is not intended to mean that no primary carer can ever be given a custodial sentence and that therefore:

"States parties must ensure that judicial officers are equipped to be able to weigh the best interests of the child versus the gravity of the offence and public security when considering the incarceration of a mother/parent."

Thus, to effectively consider the best interests of the child in sentencing decisions investment is needed in the judiciary's understanding of the impact of separation through parental incarceration on children's wellbeing, in general and in each specific case. Investment is also needed in non-custodial sentencing disposals to enable the prevention of unnecessary separation and the damage this does.

In light of this we draw the Human Rights Council's attention the January 2015 decision of the Scottish Cabinet Secretary for Justice's decision to abandon plans for a large women's prison in favour of an approach based on more community sentencing and support services. The Scottish Government's Commission on Women Offenders' report, whose recommendations the Scottish Government are following, includes a recognition of the importance of parenting support services in enabling positive parent-child relationships.[6] We warmly welcome the position taken by the Scottish Government and call on them to invest in and implement a programme of work that upholds the rights of children of incarcerated mothers as well as the rights of women in the criminal justice system.

Children Residing in Prisons

Where a custodial sentence is handed down to the primary or sole carer of a child the decision has to be taken as to whether that child will be separated from the parent or reside in prison with them. The Committee on the Rights of the Child in Concluding Observations in February 2015 stated that:

"It also recommends that the State party give due consideration to the child's best interests when deciding whether the child should live with his or her incarcerated parent. In doing so, due consideration to the overall conditions of the prison context and the particular need for parent-child contact during early childhood should be taken into full account, with the option of judicial review."[7]

Different approaches are taken in different countries with some States prohibiting children from residing with their parent (unless born in whilst the mother is in custody) and others allowing children to reside in prison until they are 7 years old (or even older in certain circumstances).[8]

If children are permitted to reside in prison investment is needed in facilities, education, health and support or welfare services that ensure that these children live in safety and are not discriminated against in their access to basic services compared to children in the general population.

The Committee on the Rights of the Child has recommended that a State party:

"Take effective and urgent measures to ensure adequate living conditions for children in prison with their mothers, including access to health and education services."[9]

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[5] African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para.36

[6] Scottish Government (2012) *Commission on Women Offenders: Final Report*

[7] Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para. 48

[8] O. Robertson, *Collateral Convicts: Children of incarcerated parents, Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011* (Quaker United Nations Office, 2012)

Maintaining a Relationship with an Incarcerated Parent

The COPING research project explored the impact of parental incarceration on their children in four countries. The results of the project showed that:

"Children with a parent/carer in prison were found to be at significantly greater risk of mental health problems than their peers in the general population."[10]

In overcoming these problems the COPING found that:

"Key factors relating to children's resilience included: children's innate qualities; family stability; and sustaining relationships with the imprisoned parent. The data confirmed that children's resilience is closely linked to open communications systems and that children need opportunities to discuss their experiences."[11]

The final report notes "overall deficiencies in services, which must be a major concern given the mental issues raised" and identifies the "wide range of good practice examples by NGOs supporting children of prisoners and their families".[12] Investment is needed to scale up or replicate effective services like these which are limiting the harm done by parental imprisonment.

In regard to measures that can support children to maintain relationships with incarcerated parent the Committee on the Rights of the Child has covered a range of issues in its recent Concluding Observations:

"The Committee recommends that the State party take all necessary measures to ensure that children can maintain personal relations and direct contact with parents in prisons and reintroduce the systematic application of the principle of closeness [whereby prisoners are incarcerated in the nearest appropriate facility to their home]. The Committee also encourages the State party to continue increasing child-friendly visiting possibilities in prisons."[13]

"With reference to the Committee's recommendations during its day of general discussion in 2011 on the "Rights of Children of Incarcerated Parents", the Committee recommends that the State party collect data and undertake a study on the situation regarding the situation of children with parents in prison in the State party, with a view to ensuring personal relations between children and their parents, including regular visits, adequate services and appropriate support in line with article 9 of the Convention, and that the best interests of the child is a primary consideration in all decisions taken."[14]

"The Committee also recommends that the State party ensure that incarcerated parents are guaranteed systematic contact with their children and the Children Development Unit, including in the cases of adoption, and that children of

[9] Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Uruguay, CRC/C/URY/CO/3-5 of 4 February 2015, para. 42(b)

[10] A Jones, B Gallagher, M Manby, O Robertson, M Schützwohl, A Berman, A Hirschfield, L Ayre, M Urban, K Sharratt and K Christmann 'Children of Prisoners: Interventions and mitigations to strengthen mental health' (University of Huddersfield, 2013) http://eprints.hud.ac.uk/18019/

[11] A Jones, B Gallagher, M Manby, O Robertson, M Schützwohl, A Berman, A Hirschfield, L Ayre, M Urban, K Sharratt and K Christmann 'Children of Prisoners: Interventions and mitigations to strengthen mental health' (University of Huddersfield, 2013) http://eprints.hud.ac.uk/18019/

[12] A Jones, B Gallagher, M Manby, O Robertson, M Schützwohl, A Berman, A Hirschfield, L Ayre, M Urban, K Sharratt and K Christmann 'Children of Prisoners: Interventions and mitigations to strengthen mental health' (University of Huddersfield, 2013) http://eprints.hud.ac.uk/18019/

[13] Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden adopted by the Committee at its 68th session (12 – 30 January 2015), CRC/C/SWE/CO/4 of 4 February, para. 35

[14] Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland, CRC/C/CHE/CO/2-4 of 4 February 2015, para. 53

incarcerated parents who do not reside in institutional care are provided with sufficient psychological treatment and social support."[15]

Children of incarcerated parents face marginalisation and stigmatisation in addition to the challenges posed by any parental separation that is not in their best interests. We welcome the steps the Human Rights Council has taken to date in recognising the rights of this group of children and call on the members and observers of the Human Rights Council to include children of incarcerated parents in their full day discussion on the rights of the child and in any action resulting from this discussion.

[15] Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para. 48